

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0797, Dennis Gallipeau v. Boulder Village Condominium Association, the court on July 26, 2005, issued the following order:

The respondent, Boulder Village Condominium Association, appeals an order of the trial court finding its August 12, 2003 and August 11, 2004 liens invalid and its non-judicial foreclosure unenforceable and awarding attorney's fees to the petitioner, Dennis Gallipeau. We affirm.

We note at the outset that it is the burden of the appealing party, here the respondent, to provide this court with a record sufficient to decide its issues on appeal. See Rix v. Kinderworks Corp., 136 N.H. 548, 553 (1992); see also Sup. Ct. R. 13. Absent a transcript of the hearing in the trial court, we must assume that the evidence was sufficient to support the result reached by the trial court. See Atwood v. Owens, 142 N.H. 396, 396 (1997). Accordingly, we review the trial court's decision for errors of law only. See *id.* at 397.

The trial court found that the August 2003 lien failed to satisfy the requirements of RSA 356-B:46, III (1995), because it sought to recover for assessments more than six months after they became due. The respondent argues that because some of the assessments cited in the lien satisfied this statutory requirement, the lien should not have been found completely unenforceable. Even if this argument had merit, we note that the lien is unsworn and thus fails to meet the requirements of RSA 356-B:46, III. Accordingly, we find no error in the trial court's ruling.

The trial court found that the August 2004 lien also failed to meet the requirements of RSA 356-B:46, III because it was not verified by oath by an officer of the corporation. The respondent argues that the person whose signature appears on the August 2004 lien was authorized by the association to take such action. Absent a transcript, however, we will not consider this factual issue and will assume the evidence was sufficient to support the trial court's ruling.

The respondent also contends that the trial court erred in finding the non-judicial foreclosure unenforceable. We disagree. We note that given the invalidity of both liens, the respondent had no basis on which to attempt a

non-judicial foreclosure. Moreover, RSA 477:3 (2001) specifically provides that every conveyance of real estate must be signed by the grantor. The record contains neither legal nor factual support for the respondent's argument that RSA 477:3 was not applicable to this case.

Finally, the respondent contends that the trial court erred in awarding the petitioner attorney's fees. Absent an unsustainable exercise of discretion, we will not overturn a trial court's ruling concerning attorney's fees. Grenier v. Barclay Square Commercial Condo. Owners' Assoc., 150 N.H. 111, 115 (2003). We give tremendous deference to trial courts' decisions on this issue. *Id.* at 116. The trial court found that the lawsuit was necessitated by the bad faith and oppressive and vexatious conduct of the respondent. We note that not only did the trial court find that the respondent failed to cite any cases to support its proposition that it was entitled to a non-judicial foreclosure, but a review of the limited record on appeal indicates that the respondent also failed to follow even the most rudimentary steps in attempting to perfect its liens. Given the limited record before us, we find no error in the trial court's award.

The respondent's remaining argument that it is entitled to attorney's fees pursuant to RSA 356-B:15, II has no merit. *Id.* at 115-18 (RSA 356-B:15, II only authorizes award of attorney's fees to condominium association for litigation in which it prevails).

Affirmed.

NADEAU, DALIANIS and GALWAY, JJ., concurred.

Eileen Fox
Clerk